

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3272 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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GUJARAT CALCINATION & MINERALSPVT. LTD.

Versus

STATTE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner
MR PUJARI AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/12/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order dated 20th

March, 1992, passed by the Chief Secretary to the State Government, Revenue Department (Appeals) in suo-motu revision initiated by him.

It appears that the land bearing Survey No.8, admeasuring 12,141 Sq.Mts. situated in the Sim of village-Bhujodi, Taluka-Bhuj, District-Kutch, was Government land and was initially granted to one Naranbhai Devabhai Harijan for agricultural purposes as a new tenure land. Mutation entry No. 53 to that effect was made in the revenue record of the village. By order dated 30th November, 1982, made by the Deputy Collector, the said grant was converted into an old tenure and mutation entry No. 266 to that effect was made in the revenue record of the village. The land was then sold to one Thakkar Lakhambhai Purshottambhai by a registered sale on 31st May, 1983, and he applied for permission to use the said land for industrial purpose. The Taluka Development Officer, under his order dated 18th January, 1984, granted permission to use the said land for industrial purpose on conditions, interalia, that the construction on the land shall be made in accordance with the layout plan, the land should be put to non-agricultural use within three years from the date of the grant of NA Permission, and that the the date of commencement of the construction and the completion of the construction shall be notified to the said office i.e. Taluka Panchayat. It appears that inspite of the aforesaid permission, the grantee Thakkar Lakhambhai did not use the land for non-agricultural purposes, but sold it to Gujarat Calcination and Minerals Pvt. Ltd.-the present petitioner. The said order of 18th January, 1984, was taken into revision suo-motu by the State Government under section 211 of the Bombay Land Revenue Code. A notice to that effect was issued on 25th July, 1986. Pending the said proceedings, the District Collector completed the non-agricultural assessment and assessed the premium to be Rs.67,861-50 under his order dated 19th September, 1991. Feeling aggrieved, the petitioner preferred revision before the State Government. The result of the said revision is not known. The aforesaid notice dated 25th July, 1986, was answered by the petitioner on 23rd November, 1990. It was admitted that the land was lying fallow. It was submitted that the petitioner had to borrow loan for the project and considerable time was consumed in raising the loan. In the meantime, the Government had prohibited excavation of bauxite and the petitioner, therefore, could not obtain the lease for bauxite excavation and for want of raw-material i.e. bauxite, the project could not be materialised. The Chief Secretary (Appeals) after

receiving the reply from the petitioner and after completion of NA assessment by the District Collector, made the impugned order dated 20th March, 1992, and set aside the NA permission granted by the Taluka Development Officer on 18th January, 1984. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Gandhi has submitted that there is no violation of the terms and conditions of the NA permission in as much as before completion of three years from the date of the NA permission, the said order was taken into revision by the State Government and under its order dated 25th July, 1996, the Chief Secretary (Appeals) had directed the petitioner to maintain status-quo as regards the land in question and not to put up any construction. Besides, the action initiated by the Chief Secretary (Appeals) is grossly belated in as much as the action has been initiated more than two years after the date of the NA permission. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of the STATE OF GUJARAT VS PATEL RAGHAV NATHA (1969 {10}, GLR, 992). He has submitted that in the said matter, the action initiated one year after the order of the NA permission was held to be grossly belated and was set aside. Considering the said judgment, the impugned action in the present case requires to be set aside on the ground of limitation alone.

In the matter of Patel Raghav Natha (*supra*), the Supreme Court has observed that - " It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised." The court further held that - " It seems to us that the Commissioner must exercise his revisional power within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes, the occupant is likely to spend money on starting building operations atleast within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961 i.e. more than a year after the order and it seems to us that this order was passed too late." Since the aforesaid judgment, there have been several judgments of this court on the matter at issue. What should be the reasonable time in the given case is required to be determined on the facts of each case and the grantee of the permission having spent money on development or improvement of the land is

considered to be one of the vital factors. In the present case, it is an admitted fact that the petitioner has not used the land for NA purposes at all or for any purpose at all. The land has remained fallow all along. The petitioner has not commenced any operation on the said land either of excavating the raw material or of building operation. Precisely, that is the reason why the NA permission has been cancelled. Mr. Gandhi has strenuously urged that the petitioner has developed the land in as much as the petitioner has put up the compound wall around the land in question and no construction could be commenced because the construction plans are not approved by the Taluka Development Officer. Moreover, the petitioner after paying the interim premium of Rs.5000/at the time of grant of permission, does not appear to have made any payment towards the premium assessed. Mr. Gandhi at this stage states that though he does not have definite instruction, in view of the order made on 25th June, 1992, the petitioner may possibly have paid the arrears of the NA assessment. Be that as it may, it is indisputable that the petitioner has not put the land to any use at all and has permitted the land to lie fallow. Besides, the bauxite excavation project is not capable of being materialised on account of prohibition against excavation of the mineral bauxite. It is however not known the date on which the said plans were submitted for approval. Not a word about the said plans is mentioned in the reply dated 23rd November, 1990 given to the show cause notice dated 25th July, 1986. It can, therefore, safely be presumed that the said plans were not submitted for approval atleast till 23rd November, 1990, i.e. long after the expiry of three years within which the construction was required to be completed.

Since the petitioner has not completed the construction within three years in accordance with the NA permission, the impugned order does not warrant interference.

The petition is dismissed. It is however clarified that this order shall not preclude the petitioner from applying for NA permission afresh, or from claiming remittance of the amount of NA assessment already paid by the petitioner. If such an application is made, the same shall be considered in accordance with law Rule is discharged. There shall be no order as to costs. Interim relief is vacated.

(MS R.M.DOSHIT J)

JOSHI